

AMENDED IN ASSEMBLY APRIL 25, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2346

Introduced by Assembly Member Butler

February 24, 2012

An act to amend Section 6330 of, and to add Chapter 10 (commencing with Section 6720) to Part 1 of Division 5 of, the Labor Code, and to add Section 192.1 to the Penal Code, relating to occupational safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 2346, as amended, Butler. Agricultural employee safety: heat-related illness.

(1) Existing law permits the Occupational Safety and Health Standards Board within the Department of Industrial Relations to adopt occupational health and safety standards to protect the welfare of employees. The Division of Occupational Safety and Health enforces occupational safety and health standards and orders. Certain violations of these standards and orders are crimes.

This bill would prescribe specified duties on employers to reduce the risk of heat illness among agricultural employees, to be enforced by the division. The bill would impose specified civil penalties, and create a private right of action, for violations of these requirements. The bill would impose a state-mandated local program because certain violations of the bill's requirements would be a crime under existing provisions of law. The bill would require the Director of Industrial Relations to provide an annual report to the Legislature regarding the enforcement of the requirements.

The bill would provide that directing an agricultural employee to perform, *or supervising an agricultural employee in the performance of*, outdoor work without providing the employee with both continuous, ready access to an area of shade sufficient to allow the body to cool and potable water that is suitably cool and available in quantities sufficient to allow the employee to drink one quart of water per hour throughout the employee's work shift, ~~where the employee dies as the proximate result of heat-related causes, would~~ *may* constitute the crime of involuntary manslaughter, *as provided*. ~~By expanding the bases upon which the crime of involuntary manslaughter could be committed, the bill would impose a state-mandated local program. The bill, except as otherwise provided,~~ would require restitution *under existing provisions of law* to the immediate surviving family of the deceased employee in an amount ~~between up to \$1,000,000 and \$1,500,000, inclusive, in compensation for the lost future earnings of the deceased employee,~~ when involuntary manslaughter under the bill is committed.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act may be known, and shall be cited, as the
- 2 Farm Worker Safety Act of 2012.
- 3 SEC. 2. Section 6330 of the Labor Code is amended to read:
- 4 6330. (a) The director shall prepare and submit to the
- 5 Legislature, not later than March 1, an annual report on the division
- 6 activities. The report shall include, but need not be limited to, the
- 7 following information for the previous calendar year:
- 8 (1) The amount of funds allocated and spent in enforcement,
- 9 education and research, and administration by the division.
- 10 (2) Total inspections made, and citations issued by the division.
- 11 (3) The number of civil penalties assessed, total amount of fines
- 12 collected, and the number of appeals heard.
- 13 (4) The number of contractors referred to the Contractor's State
- 14 License Board for hearing, pursuant to Section 7109.5 of the

1 Business and Professions Code, and the total number of these cases
2 resulting in suspension or revocation of a license.

3 (5) The report from the division prepared by the Bureau of
4 Investigations for submission to the director pursuant to Section
5 6315.3.

6 (6) Recommendations for legislation that improves the ability
7 of the division to provide safety in places of employment.

8 (7) (A) The number of complaints received charging a violation
9 of Chapter 10 (commencing with Section 6720), and the number
10 of those complaints that did not result in an onsite inspection.

11 (B) The amount of initial penalties imposed for a violation of
12 Chapter 10 (commencing with Section 6720), the amount by which
13 those penalties were reduced through amendment, the amount by
14 which those penalties were reduced through informal settlement,
15 the amount by which those penalties were reduced through formal
16 settlement, the amount by which those penalties were reduced by
17 decision of the appeals board, other than a decision approving a
18 formal settlement, and the amount by which those penalties were
19 reduced by any other means.

20 (C) The amount of penalties collected for a violation of Chapter
21 10 (commencing with Section 6720).

22 (b) The report shall be made to the Speaker of the Assembly
23 and the Chairperson of the Senate Committee on Rules, for
24 assignment to the appropriate committee or committees for
25 evaluation.

26 SEC. 3. Chapter 10 (commencing with Section 6720) is added
27 to Part 1 of Division 5 of the Labor Code, to read:

28
29 CHAPTER 10. AGRICULTURAL EMPLOYMENT
30

31 6720. For the purpose of this chapter, the following terms have
32 the following meanings:

33 (a) "Acclimatization" means temporary adaptation of the body
34 to work in the heat that occurs gradually when a person is exposed
35 to the heat.

36 (b) "Employee" means an agricultural employee.

37 (c) "Employer" means an agricultural employer.

38 (d) "Environmental risk factors for heat illness" means working
39 conditions that create the possibility that heat illness could occur,
40 including air temperature, relative humidity, radiant heat from the

1 sun and other sources, conductive heat sources such as the ground,
2 air movement, workload severity and duration, and protective
3 clothing.

4 (e) “Farm operator” includes both of the following:

5 (1) A person who owns the real property used in the farming
6 operation, except that, when the real property is leased, the owner
7 is considered a farm operator only if he or she gains something of
8 benefit from the farming operation beyond the reasonable and
9 customary rent or cost of leasing the property.

10 (2) A person who leases the real property used in the farming
11 operation.

12 (f) “Farming operation” shall be liberally construed to include
13 farming in any of its branches, and includes the production,
14 cultivation, growing, harvesting, packing, whether in a field,
15 packing shed, or any other location, or shipping of any agricultural
16 or horticultural commodities, including commodities defined as
17 agricultural commodities in Section 1141j(f) of Title 12 of the
18 United States Code; any activity necessary to the operation of a
19 dairy farm, as defined in Section 32505 of the Food and
20 Agricultural Code; the raising of livestock, bees, furbearing
21 animals, or poultry; and any practices, including any forestry or
22 lumbering operations, performed by a farm operator or in a farm
23 operation as an incident to or in conjunction with these farming
24 operations, including preparation for market and delivery to storage
25 or to market or to carriers for transportation to market.

26 (g) “Heat illness” means a serious medical condition resulting
27 from the body’s inability to cope with a particular heat load, and
28 includes heat cramps, heat exhaustion, heat syncope, and heat
29 stroke.

30 (h) “Personal risk factors for heat illness” means factors such
31 as an individual’s age, degree of acclimatization, health, water
32 consumption, alcohol consumption, caffeine consumption, and
33 use of prescription medications that affect the body’s water
34 retention or other physiological responses to heat.

35 (i) “Shade” means complete blockage of direct sunlight. One
36 indicator that blockage is sufficient is when objects do not cast a
37 shadow in the area of blocked sunlight. Shade is not adequate when
38 heat in the area of shade defeats the purpose of shade, which is to
39 allow the body to cool.

1 (j) "Temperature" means the dry bulb temperature in degrees
2 Fahrenheit obtainable by using a thermometer to measure the
3 outdoor temperature. Except where otherwise indicated, the
4 temperature measurement shall be taken in an area where there is
5 no shade. The bulb or sensor of the thermometer shall be shielded,
6 with the hand or some other object, from direct contact by sunlight
7 while taking the measurement.

8 6721. (a) This chapter applies to the control of the risk of
9 occurrence of heat illness among agricultural employees. This
10 chapter is not intended to exclude the application of any section
11 of Title 8 of the California Code of Regulations. This chapter
12 applies to all outdoor places of agricultural employment.

13 (b) (1) Each employee shall have continuous, ready access, as
14 close as possible and at a distance of no more than 10 feet from
15 where he or she is working, to fresh, pure, and suitably cool potable
16 drinking water meeting the requirements of Title 8 of the California
17 Code of Regulations, which does not have an unpalatable smell
18 or taste. The temperature of the water shall be 70 degrees or lower
19 at all times. The water shall be provided to the employee free of
20 charge.

21 (2) Each employee shall be provided with a canteen for his or
22 her individual use for the temporary storage and drinking of water,
23 or with a cup of at least 8-ounce but no more than 32-ounce
24 capacity for his or her individual use for drinking of water. The
25 canteens or cups shall be provided to the employees free of charge
26 and replaced or cleaned and sanitized after each work shift.

27 (3) Where drinking water is not plumbed or otherwise
28 continuously supplied, it shall be provided in a sufficient quantity
29 at the beginning of the work shift to provide at least one quart per
30 employee per hour for drinking for the entire shift. Water shall be
31 available at all times in sufficient quantities to provide at least one
32 quart per employee per hour for the remainder of the work shift.

33 (4) The frequent drinking of water, as described in this section,
34 shall be encouraged and permitted. At no time shall any employer
35 state or imply that an employee will face a negative consequence
36 for the frequent drinking of water or for stopping work to drink
37 water. Each employee shall be compensated for the time taken to
38 access water. For an employee working on a piece-rate basis,
39 compensation during the pay period in which time was taken to

1 access water shall be determined based upon the employee's
2 average piece-rate wage.

3 (c) (1) The employer shall have and maintain one or more areas
4 with shade at all times while employees are present that is either
5 open to the air or provided with ventilation or cooling. The shaded
6 area shall be located as close as practicable to the areas where
7 employees are working, and in no event shall be at a distance
8 greater than 200 feet away from any employee. Canopies,
9 umbrellas, and other temporary structures or devices may be used
10 to provide shade in combination, if they completely block direct
11 sunlight and the temperature in the area of shade is significantly
12 lower than the ambient temperature outside of that area.

13 (2) The amount of shade provided shall be enough to
14 accommodate all of the employees on the shift at any time, so that
15 the employees can all sit fully in the shade without having to be
16 in physical contact with each other. An employer shall provide
17 seating or ground covering sufficient to prevent each of the
18 employees from being in contact with bare soil and to insulate
19 each of the employees from the heat of the ground.

20 (d) (1) Each employee shall be encouraged and permitted to
21 take rest breaks in the shade at any time when he or she feels the
22 need to do so to protect himself or herself from overheating. At
23 no time shall any employer state or imply that an employee will
24 face any negative consequence for taking a rest break in the shade
25 or for stopping work to take a rest break in the shade. An employee
26 who takes a rest break shall be encouraged and permitted to
27 continue resting in the shade as long as necessary to ensure that
28 any signs or symptoms of heat illness have resolved, but in no
29 event for less than 10 minutes in addition to the time needed to
30 access the shade. Rest in the shade shall be permitted at all times.

31 (2) The employer shall implement additional high-heat
32 procedures when the temperature equals or exceeds 80 degrees.
33 These procedures shall be in addition to, and not instead of, any
34 other procedures required by this chapter, and shall include all of
35 the following:

36 (A) Requiring that each employee take a rest break at least every
37 two hours for a minimum of 15 minutes per break.

38 (B) Ensuring that effective communication by voice,
39 observation, or electronic means is maintained so that employees
40 at the worksite can immediately contact a supervisor when

1 necessary. An electronic device, such as a cell phone or text
2 messaging device, may be used for this purpose only if reception
3 in the area is reliable.

4 (C) Using a buddy system, in which two workers are assigned
5 to observe each other throughout the workday or a portion of the
6 workday, to encourage each other to drink water and take rest
7 breaks, and to watch for signs of heat illness. Each worker shall
8 be trained to recognize the signs of heat illness in others.

9 (D) Supervisor observation of employees for decreases in
10 alertness and signs or symptoms of heat illness. If a supervisor
11 observes a decreases in alertness or signs or symptoms of heat
12 illness, the supervisor shall take action as required under
13 subdivision (e).

14 (E) Reminding employees throughout the work shift to drink
15 plenty of water.

16 (F) Close supervision of a new employee for heat illness
17 prevention by a supervisor or designee for the first 14 days of the
18 employee's employment by the employer, unless the employer
19 documents at the time of hire that the employee has been doing
20 similar outdoor work for at least 10 of the past 30 days for four or
21 more hours per day.

22 (3) Each employee shall be compensated for rest breaks taken
23 pursuant to this section, and for rest periods or cool-down rest
24 periods established by any applicable regulation or order of the
25 Industrial Welfare Commission, the Division of Occupational
26 Health and Safety, or the Occupational Safety and Health Standards
27 Board. An employee working on a piece-rate basis shall be
28 compensated at the employee's average piece-rate wage during
29 the pay period in which the rest break, rest period, or cool-down
30 rest period was taken.

31 (e) If a supervisor observes, or any employee reports, any signs
32 of heat illness in an employee, the supervisor shall take immediate
33 action to alleviate the symptoms, including providing the employee
34 with water, a paid rest break in the shade, and appropriate first aid.
35 The employee shall be provided access to medical aid consistent
36 with the procedures established pursuant to subdivision (f).

37 (f) (1) An employer shall establish procedures for the following:

38 (A) Responding to signs of possible heat illness, including how
39 emergency medical services will be provided.

1 (B) Contacting emergency medical services and, if necessary,
2 transporting employees to a place where they can be reached by
3 an emergency medical service provider.

4 (C) Ensuring that, in the event of an emergency, clear and
5 precise directions to the worksite are provided to emergency
6 responders.

7 (2) The procedures shall include designating a person to be
8 available to ensure that emergency procedures are invoked when
9 appropriate.

10 (3) The procedures shall be deemed insufficient, and therefore
11 in violation of this subdivision, if either of the following occurs:

12 (A) An employee presents signs of heat illness and is not
13 transported, commencing within five minutes of the onset of the
14 heat stress signs, by air-conditioned automobile or ambulance to
15 the nearest appropriate emergency medical service provider for
16 appropriate medical care.

17 (B) An employee presents suspected signs of heat illness and
18 is sent home instead of being given onsite first aid and being
19 transported by air-conditioned automobile or ambulance to the
20 nearest appropriate emergency medical service provider and
21 assessed and authorized for discharge by licensed medical
22 personnel.

23 (g) (1) An employee shall not begin outdoor work unless the
24 employee has received the training required by this paragraph.
25 Effective training in the following topics shall be provided to each
26 supervisory and nonsupervisory employee:

27 (A) The requirements of this section, including the employer's
28 responsibility to provide water, shade, rest breaks, and access to
29 medical aid as set forth in this section, and the prohibition on
30 retaliation as set forth in Section 6723.

31 (B) The employer's procedures established pursuant to
32 subdivision (f).

33 (C) The environmental and personal risk factors for heat illness,
34 as well as the added burden of heat load on the body caused by
35 exertion, clothing, and personal protective equipment.

36 (D) The importance of frequent consumption of small quantities
37 of water, up to four cups per hour, when the work environment is
38 hot and employees are likely to be sweating more than usual in
39 the performance of their duties.

40 (E) The importance of acclimatization.

1 (F) The different types of heat illness and the common signs
2 and symptoms of heat illness.

3 (G) The importance to each employee of immediately reporting
4 to the employer, directly or through the employee's supervisor,
5 symptoms or signs of heat illness in himself or herself, or in
6 coworkers.

7 (2) A supervisor shall not be assigned to supervise employees
8 unless the supervisor has received the training required by this
9 paragraph. In addition to the training required by paragraph (1),
10 effective training on the following topics shall be provided to each
11 supervisory employee:

12 (A) The procedures the supervisor is to follow to implement
13 the applicable provisions of this section.

14 (B) The procedures the supervisor is to follow when an
15 employee exhibits symptoms consistent with possible heat illness,
16 including emergency response procedures.

17 (C) How to monitor weather reports and how to respond to hot
18 weather advisories.

19 6722. (a) (1) An employer shall maintain written procedures
20 for complying with the requirements of this chapter. The written
21 procedures shall be made available within 24 hours of a request
22 made by a representative of the division, an employee, or a
23 representative of an employee.

24 (2) Procedures for complying with the requirements of this
25 chapter may be integrated into the employer's written Injury and
26 Illness Prevention Program, or maintained in a separate document.

27 (b) (1) An employer shall certify by January 31 of each year,
28 or on the first day of operation in any calendar year in which an
29 employer begins an employment relationship after January 31, that
30 the employer has adopted written procedures for complying with
31 the requirements of this chapter, and has acquired and made
32 available to the appropriate persons all materials and equipment
33 necessary for providing employees with water, shade, and training
34 in the prevention of heat illness. This certification shall be in
35 writing, signed, and dated, and shall be made available within 24
36 hours of a request made by a representative of the division, an
37 employee, or a representative of an employee.

38 (2) If an employer is found not to have adopted written
39 procedures for complying with the requirements of this chapter
40 following certification, or is found to lack any of the materials and

1 equipment necessary for providing employees with water, shade,
2 and training in the prevention of heat illness following certification,
3 there shall be a rebuttable presumption that the certification was
4 false at the time it was made, and the employer shall be subject to
5 penalties for fraud.

6 (c) Prior to the commencement of outdoor work at any worksite,
7 the employer shall post in a manner readily visible and legible a
8 sign setting forth the identity of the farm operator, the identity of
9 the employer, the date, the number of employees of that employer
10 in each crew at that worksite on that date, and the location at which
11 the written procedures for complying with this chapter are
12 maintained.

13 6723. (a) An employee shall not be discharged or penalized
14 in any way for drinking water, taking a break to get water, taking
15 a rest break in the shade, or taking any other action on behalf of
16 himself or herself or his or her coworkers that is reasonably
17 calculated to prevent heat illness.

18 (b) An employee shall not be discharged or penalized in any
19 way for taking action to secure his or her employer's compliance
20 with the requirements of this chapter, including directly or
21 indirectly communicating with the employer about the requirements
22 of this chapter or the prevention of heat illness, reporting a violation
23 of this chapter or otherwise communicating with any person or
24 entity about the employer's compliance with the requirements of
25 this section, or participating in any way in any investigation or
26 proceeding to enforce the requirements of this chapter.

27 6724. (a) (1) This chapter shall be enforced by the division.

28 (2) The division shall treat a complaint alleging violation of this
29 chapter, other than a complaint alleging a violation of only Section
30 6722, as a complaint charging a serious violation within the
31 meaning of Section 6309, and shall investigate all of these
32 complaints through onsite inspection.

33 (3) During an onsite inspection of an outdoor place of
34 agricultural employment, the division shall inform all employees
35 of the prohibition on retaliation set forth in Section 6723. The
36 division shall provide employees with written materials, in the
37 language or languages spoken by the employees, setting forth a
38 clear and concise summary of the requirements of this chapter and
39 a means of contacting the division if the employer subsequently
40 commits a retaliatory act or other violation of this chapter.

1 (4) An employer shall be designated as a high hazardous industry
2 employer within the meaning of Section 6314.1 if the division
3 receives a complaint against the employer from an employee or
4 an employee's representative alleging a violation of this chapter,
5 unless the division investigates the complaint within 24 hours and
6 finds it to be without foundation, or the division issues a citation
7 against the employer for a violation of this chapter, unless the
8 citation is withdrawn in its entirety.

9 (5) The division shall require an employer to immediately
10 correct any failure to provide water or shade as required by this
11 chapter, regardless of the status of any related action or appeal.

12 (b) (1) An employee affected by an employer's failure to
13 comply with this chapter may bring an action for injunctive relief
14 and is entitled to recover in a civil action all damages caused by
15 the failure to comply, including interest on those damages, and
16 civil penalties as set forth in Section 6725. This remedy shall be
17 in addition to any other available remedy.

18 (2) An employee may bring a civil action pursuant to this
19 subdivision notwithstanding any action taken or not taken by the
20 division in relation to the employer's compliance with this chapter.
21 However, an employee may recover the civil penalties set forth in
22 Section 6725 only to the extent that the division has not imposed
23 and collected those penalties against the same employer for the
24 same alleged violation as of the date the civil action is filed.

25 (3) Fifty percent of the civil penalties recovered by the employee
26 in a civil action brought pursuant to this subdivision shall be
27 distributed to the division, with the remainder distributed to the
28 employee. The entire amount of any damages recovered by the
29 employee shall be distributed to the employee.

30 (4) An employer who is found in violation of this chapter in a
31 civil action brought pursuant to this subdivision shall be designated
32 a high hazardous industry employer within the meaning of Section
33 6314.1, and that designation shall be withdrawn only if the
34 judgment is vacated in its entirety.

35 (5) An employee who prevails in a civil action brought pursuant
36 to this subdivision is entitled to an award of reasonable attorney's
37 fees and costs of suit, including expert witness fees.

38 (c) An enforcement action or proceeding may be brought
39 pursuant to this section against all agricultural entities involved in
40 the farming operation, including the farm operator. For purposes

1 of this section, the acts or omissions of an agricultural employer
2 shall be imputed to the farm operator on the real property used in
3 whose farming operation the agricultural employer was acting at
4 the time of the alleged violation of this chapter and that farm
5 operator shall be jointly and severally liable with and to the same
6 extent as the agricultural employer.

7 (d) A signed statement obtained by the division from an
8 employee that is made under penalty of perjury is admissible in
9 an administrative enforcement proceeding brought pursuant to this
10 section.

11 6725. (a) For a violation of Section 6721 or 6723, the civil
12 penalties shall be as follows:

13 (1) For each day on which the violation existed while one or
14 more employees were working and the temperature did not exceed
15 80 degrees, the penalty shall be the product of five hundred dollars
16 (\$500) multiplied by the number of employees on the work crew
17 at the time of the violation.

18 (2) For each day on which the violation existed while one or
19 more employees were working and the temperature exceeded 80
20 degrees but did not exceed 90 degrees, the penalty shall be the
21 product of two thousand dollars (\$2,000) multiplied by the number
22 of employees on the work crew at the time of the violation.

23 (3) For each day on which the violation existed while one or
24 more employees were working and the temperature exceeded 90
25 degrees but did not exceed 100 degrees, the penalty shall be the
26 product of five thousand dollars (\$5,000) multiplied by the number
27 of employees on the work crew at the time of the violation.

28 (4) For each day on which the violation existed while one or
29 more employees were working and the temperature exceeded 100
30 degrees, the penalty shall be the product of ten thousand dollars
31 (\$10,000) multiplied by the number of employees on the work
32 crew at the time of the violation.

33 (5) Notwithstanding paragraphs (1) to (4), inclusive, if the
34 violation existed during any work shift when any employee
35 suffered heat illness, the penalty shall be not less than fifty
36 thousand dollars (\$50,000).

37 (6) Notwithstanding paragraphs (1) to (4), inclusive, no penalty
38 shall exceed two hundred thousand dollars (\$200,000).

39 (b) (1) Except as otherwise provided in paragraph (2), for a
40 violation of Section 6722, civil penalties shall be imposed in the

1 amount of five hundred dollars (\$500) multiplied by the number
2 of days the violation existed while employees were working.

3 (2) The penalty described in paragraph (1) shall not exceed ten
4 thousand dollars (\$10,000).

5 (c) (1) A civil penalty imposed and calculated pursuant to
6 subdivision (a) or (b) may be reduced by as much as 50 percent,
7 if the violation did not exist during a work shift when an employee
8 suffered heat illness. A reduction shall be based on the facts and
9 circumstances of the violation, including the following
10 considerations:

11 (A) The culpability of the employer.

12 (B) Whether an employee lacked access to water or shade at
13 any time while the violation existed.

14 (C) The size, sophistication, and financial strength of the
15 employer.

16 (D) The employer compliance history related to heat illness.

17 (E) The degree of injury caused by the employer's current or
18 past violations.

19 (F) Any efforts by an employee or other person to secure the
20 employer's compliance through means other than litigation.

21 (G) Any expenses incurred by employees, the division, and
22 others in investigating the employer's compliance.

23 (2) The employer has the burden of proving the existence of
24 facts justifying a reduction of the penalty pursuant to this
25 subdivision.

26 SEC. 4. Section 192.1 is added to the Penal Code, to read:

27 192.1. (a) For the purpose of Section 192, directing an
28 agricultural employee to perform, *or supervising an agricultural*
29 *employee in the performance of*, outdoor work without providing
30 the employee with both continuous, ready access to an area of
31 shade sufficient to allow the body to cool and potable water that
32 is suitably cool and available in quantities sufficient to allow the
33 employee to drink one quart of water per hour throughout the
34 employee's work shift; ~~where the employee dies as the proximate~~
35 ~~result of heat-related causes, shall be deemed to be the commission~~
36 ~~of an unlawful act, not amounting to a felony, or the commission~~
37 ~~of a lawful act that might produce death, in an unlawful manner,~~
38 ~~or without due caution and circumspection. may constitute the~~
39 *commission of an unlawful act, not amounting to a felony, or the*
40 *commission of a lawful act that might produce death, in an*

1 *unlawful manner, or without due caution and circumspection.* This
2 subdivision does not narrow or limit in any way the definition of
3 involuntary manslaughter that would exist without regard to this
4 subdivision, or limit or prevent prosecution pursuant to any other
5 applicable law.

6 (b) (1) If a corporation or natural person is convicted of the
7 crime described in subdivision (a), the court, *in imposing restitution*
8 *pursuant to subdivision (f) of Section 1202.4*, shall require the
9 defendant to make restitution to the immediate surviving family
10 of the deceased employee, to be shared equally, in an amount
11 ~~between up to one million dollars (\$1,000,000) and one million~~
12 ~~five hundred thousand dollars (\$1,500,000), inclusive. The court~~
13 ~~may impose restitution in an amount less than one million dollars~~
14 ~~(\$1,000,000), if necessary to comply with constitutional~~
15 ~~requirements. The restitution described in this subdivision shall~~
16 ~~be in addition to any other restitution required by Section 1202.4~~
17 ~~or 1203.1, or any other applicable provision of law. The restitution~~
18 ~~order shall be enforceable as if the order were a civil judgment in~~
19 *compensation for the lost future earnings of the deceased employee.*

20 (2) “Immediate surviving family” means a spouse, child,
21 stepchild, brother, stepbrother, sister, stepsister, mother,
22 stepmother, father, or stepfather of the decedent.

23 SEC. 5. The provisions of this section are severable. If any
24 provision of this act or its application is held invalid, that invalidity
25 shall not affect other provisions or applications that can be given
26 effect without the invalid provision or application.

27 SEC. 6. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.